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THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA

LT GAME INTERNATIONAL LTD.,

CASE NO. 2:12-cv-01216-GMN-GWF

Plaintiff,

LT GAME INTERNATIONAL LTD.'S  
MOTION FOR LEAVE TO FILE  
SECOND AMENDED COMPLAINT

v.

SHUFFLE MASTER, INC.,

Defendant.

Pursuant to Local Rule 15-1 and Fed. R. Civ. P. 15(a) and 20(a), plaintiff LT Game International Ltd. ("LT Game International") hereby moves the Court for leave to file its Second Amended Complaint, a copy of which is attached hereto as **Exhibit 1**.

LT Game International seeks to add new factual allegations and further seeks to add LT Game (Canada) Limited ("LT Game Canada") as a plaintiff in this matter.

This Motion is made and based upon the following Memorandum of Points and Authorities, the entire case file, and any oral argument the Court may entertain on the matter.

RESPECTFULLY SUBMITTED this 31st day of January, 2013.

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## **MEMORANDUM OF POINTS AND AUTHORITIES**

## I. INTRODUCTION

On July 10, 2012, LT Game International filed its Complaint against defendant Shuffle Master, Inc. (“Defendant”). *See* Complaint, Dkt. 1. The Complaint asserts, among other things, that Defendant has repeatedly disparaged LT Game International and its products and has tortiously interfered with LT Game International’s business activities, dealings, and contracts with customers. *Id.* The Complaint further alleges that Defendant has made misrepresentations about LT Game International and its products at international trade shows and to customers in the casino and gaming industry around the world and in Las Vegas, Nevada. *Id.*

On July 31, 2012, Defendant filed a motion to dismiss the Complaint alleging, among other things, that LT Game International was not authorized to do business in Nevada, and thus could not maintain any action in this state. *See Motion to Dismiss*, Dkt. 11. On August 17, 2012, LT Game International filed its First Amended Complaint to include information related

1 to LT Game International's registration to do business in Nevada and to include additional  
 2 factual allegations. *See* First Amended Complaint, Dkt. 14. Despite amending the Complaint  
 3 to address LT Game International's ability to maintain an action, Defendant filed a motion to  
 4 dismiss the First Amended Complaint arguing that LT Game International failed to assert a  
 5 claim upon which relief could be granted. *See* Motion to Dismiss First Amended Complaint,  
 6 Dkt. 17. Defendant's motion has not yet been adjudicated.

7 On November 20, 2012, LT Game International served Defendant with its first set of  
 8 requests for production of documents. On December 20, 2012, Defendant served responses  
 9 thereto, all of which asserted the following objection:

10 This request is further overly broad and unduly burdensome as it necessarily  
 11 includes requests for documents relating to jurisdictions where the [sic] LT Game  
 12 has not done business, has not been legally able to do business or has not  
 13 contemplated conducting business, all of which are non-discoverable and  
 irrelevant to this matter. In addition, LT Game International Ltd., Plaintiff in this  
 action, was not incorporated and did not exist until January 27, 2011.

14 *See Responses to Plaintiff LT Game International Ltd.'s First Set of Requests for Production of*  
 15 *Documents ("Discovery Responses")*, a true and correct copy of which is attached hereto as  
 16 **Exhibit 2.** Accordingly, Defendant has refused to turn over certain documents on the basis that  
 17 LT Game International was not incorporated until January 27, 2011 and was not authorized to  
 18 conduct business abroad.

19 Rather than engage in prolonged motion practice related to Defendant's objections, LT  
 20 Game International seeks to add LT Game Canada as a plaintiff in order to satisfy Defendant's  
 21 objections.<sup>1</sup> LT Game Canada was formed in Canada in 2008 and is a wholly owned subsidiary  
 22 of the parent company, LT Game, Ltd., based out of Hong Kong. LT Game Canada was

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23  
 24 <sup>1</sup> By adding LT Game Canada, LT Game International does not concede that Defendant's  
 25 objections are valid; however, LT Game International would like to proceed with discovery in  
 26 an expeditious manner and believes amending its complaint is the quickest alternative to  
 27 engaging in lengthy meets and confers and motion practice over Defendant's objections.

28 Moreover, in the event Defendant asserts similar objections that LT Game Canada is not  
 the proper entity, those objections should be dismissed. LT Game Canada, as a wholly owned  
 subsidiary of Hong Kong-based LT Game, Ltd., has been damaged by Defendant's conduct as  
 alleged in the Second Amended Complaint.

1 formed for the purpose of conducting and managing the parent company's international sales  
 2 and marketing activities. Like LT Game International, LT Game Canada is a direct and  
 3 intended beneficiary of the contracts and business dealings of LT Game. The damages to the  
 4 LT Game brand inflicted by Defendant's unlawful actions have been suffered by both LT Game  
 5 International and LT Game Canada.

6 LT Game International further seeks to add LT Game Canada, formed in 2008, as a  
 7 plaintiff in this matter to resolve any objection by Defendant regarding the production of  
 8 documents dated prior to LT Game International's formation in 2011.<sup>2</sup> Moreover, LT Game  
 9 Canada engages in business activities throughout the world related to the full scope of the LT  
 10 Game brand, while LT Game International is the exclusive North American licensee of LT  
 11 Game's Live Multi-Table System. Thus, the inclusion of LT Game Canada eliminates  
 12 Defendant's objections to discovery related to time, geography, and the scope of the  
 13 propounding party's business.

14 LT Game International's investigation into the facts of this matter, which began prior to  
 15 the inception of this lawsuit and has been ongoing, has involved documents and individuals  
 16 located in other countries.<sup>3</sup> Many of the relevant documents, including Macau court orders and  
 17 employee notes, were required to be translated from Chinese and Portuguese to English, which  
 18 required significant time and expense. In addition, some of the individuals with relevant  
 19 information do not speak English as a first language, resulting in a delay in communications.

20 While LT Game International investigated the factual allegations in order to draft the  
 21 original Complaint (Dkt. 1) and the First Amended Complaint (Dkt. 14) in good faith, the  
 22 ongoing investigation has led to the discovery of further relevant information that has been  
 23 included in the draft Second Amended Complaint. Adding additional parties and factual

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25 <sup>2</sup> LT Game Canada registered with the Nevada Secretary of State on or about September  
 24, 2012, after the filing of the First Amended Complaint.

26 <sup>3</sup> Defendant has asserted that the First Amended Complaint does not contain sufficient  
 27 factual allegations. While they firmly disagree, LT Game International and LT Game Canada  
 28 have included additional factual allegations that have been gathered since the filing of the First  
 Amended Complaint.

1 allegations in a second amended complaint is LT Game International's right under Rule 15 and  
 2 this Court's Scheduling Order. *See* FRCP 15(a); *see also* Scheduling Order, Dkt. 23 (granting  
 3 LT Game International's Individual Proposed Discovery Plan and Scheduling Order); LT Game  
 4 International's Individual Proposed Discovery Plan and Scheduling Order, Dkt. 20 (setting the  
 5 last day to file a motion to amend the pleadings or add parties on January 31, 2013). This is  
 6 true where there has been no undue delay, LT Game International and LT Game Canada have  
 7 always acted in good faith, Defendant will not be prejudiced by the amendment and the  
 8 amendment is not futile. Accordingly, LT Game International requests leave to amend its First  
 9 Amended Complaint in order to include LT Game Canada as a plaintiff and to include  
 10 additional factual allegations.

11 **II. LEGAL ARGUMENT**

12 **A. LT Game International's Request for Leave to File a Second Amended  
 13 Complaint is Proper and Will Not Prejudice Defendant.**

14 Fed. R. Civ. P. 15(a) provides that leave to amend "shall be freely given when justice so  
 15 requires." As a general principle, leave to amend should be granted with "extreme liberality."  
 16 *Sequoia Elec., LLC v. Trustees of Laborers Joint Trust Fund*, 2013 WL 321661 at 3 (D.Nev.  
 17 Jan. 28, 2013) (Dawson K.); *see also Morgan v. City of Henderson Detention Center*, 2012 WL  
 18 2884889 at 2 (D.Nev. July 13, 2012) (Navarro G.); *DCD Programs, Ltd. v. Leighton*, 833 F. 2d  
 19 183, 186 (9th Cir. 1987)(the "policy of favoring amendments to pleadings should be applied  
 20 with extreme liberality") (internal citations omitted). The party opposing the amendment bears  
 21 the burden of showing why the amendment should not be granted. *Wright v. Incline Village  
 22 General Imp. Dist.*, 597 F. Supp. 2d 1191, 1210 (D. Nev. 2009). "Where underlying facts or  
 23 circumstances of a case may be a proper subject of relief, [a plaintiff] ought to be afforded an  
 24 opportunity to test his claims on the merits." *Id.*

25 All four factors commonly used to determine the propriety of a motion for leave to  
 26 amend – bad faith, undue delay, prejudice to the opposing party, and futility of amendment –  
 27 weigh in favor of granting leave in this case. *DCD Programs, Ltd.*, 833 F.2d at 186.

28

1           **1. LT Game International's request to file a Second Amended  
Complaint is made in good faith.**

2           There is no evidence to suggest that LT Game International is seeking to file the Second  
3 Amended Complaint with an improper motive. In cases where leave to amend has been denied,  
4 courts have found identifiable grounds of bad faith, such as seeking to add a defendant "to  
5 destroy diversity and to destroy the jurisdiction of this court." *Sorosky v. Burroughs Corp.*, 826  
6 F.2d 794, 806 (9th Cir. 1987). Here, LT Game International's request seeks to resolve the  
7 objections Defendant raised to LT Game International's discovery requests and seeks to  
8 preserve judicial economy rather than engage in dilatory tactics.

9           Additionally, there is no evidence that LT Game International is acting in bad faith with  
10 respect to the additional factual allegations contained in the draft Second Amended Complaint.  
11 In the course of its ongoing investigation, LT Game International has learned additional facts  
12 and/or clarification of facts regarding Defendant's actions. These facts have been included in  
13 the Second Amended Complaint. In fact, Defendant has argued that the original Complaint and  
14 the First Amended Complaint contained insufficient specific allegations. Now, LT Game  
15 International seeks to put forth the additional allegations it has discovered since the First  
16 Amended Complaint was filed. LT Game International has always acted in good faith, and it  
17 should be granted leave to file the Second Amended Complaint.

18           **2. LT Game International has not unduly delayed seeking leave to  
amend.**

20           The deadline by which LT Game International is required to file a motion to amend  
21 pleadings or add parties is January 31, 2013. Defendant served LT Game International with  
22 Defendant's Discovery Responses on December 20, 2012. After considering the objections  
23 raised by Defendant, LT Game International believes it is best to amend its First Amended  
24 Complaint and add LT Game Canada as a party. There has been no undue delay. Moreover,  
25 undue delay alone cannot justify the denial of a motion for leave to amend. *See Bowles v.*  
26 *Reade*, 198 F.3d 752, 758 (9th Cir. 1999).

27           As previously stated, LT Game International's investigation into this matter is ongoing  
28 and involved significant obstacles related to third-party witnesses and language barriers and

1 translations. In addition, while LT Game Canada was formed in 2008, it was not registered to  
 2 do business in Nevada until late September of 2012. The deadline to amend pleadings and add  
 3 parties has not yet passed; thus, LT Game International respectfully asserts that this Court  
 4 should allow LT Game International to amend to insert the facts learned since the First  
 5 Amended Complaint was filed and to add LT Game Canada as a party.

6           **3. Defendant will not be prejudiced if leave to amend is granted.**

7           Preliminarily, limited discovery has taken place in this case. The parties have been  
 8 negotiating and formulating a protective order to protect confidential information and  
 9 documents. The parties finalized the protective order and submitted the same to the Court on  
 10 January 16, 2013, and the Magistrate Judge signed and entered the Stipulated Protective Order  
 11 on January 24, 2013. *See Protective Order, Dkt. 32.* Accordingly, the parties are in the infancy  
 12 of discovery in this case. Moreover, as the current scheduling order stands, discovery closes on  
 13 May 1, 2013. Thus, Defendant will not be prejudiced by allowing LT Game International to  
 14 file its Second Amended Complaint at this relatively early stage.

15           In addition, “where a defendant is on notice of the facts contained in an amendment to a  
 16 complaint, there is no serious prejudice to defendant in allowing the amendment.” *Sierra Club*  
 17 *v. Union Oil Co. of Cal.*, 813 F.2d 1480, 1493 (9th Cir.1987), *vacated on other grounds by* 485  
 18 U.S. 931 (1988). At all times, Defendant was aware that this case involved misrepresentations  
 19 and other acts Defendant committed at international trade shows in Macau in May 2012 and at  
 20 other times in Australia and Las Vegas, Nevada. *See First Amended Complaint, Dkt. 14.*  
 21 Therefore, Defendant has been on notice of the facts that will be asserted in the Second  
 22 Amended Complaint.

23           Finally, Defendant has asserted that the original Complaint and the First Amended  
 24 Complaint were deficient with respect to specific factual allegations. While LT Game  
 25 International disagrees with this assertion, the amendment will address Defendant’s argument.  
 26 Defendant will not be prejudiced by the amendment with respect to the additional factual  
 27 allegations or the addition of LT Game Canada as a party.

28

1                   4. Amendment will not be futile because the Second Amended  
 2 Complaint, in addition to adding additional factual allegations, adds  
 3 as a plaintiff the entity, formed in 2008, charged with conducting and  
 4 managing LT Game's international sales and marketing activities.

5 There is nothing to suggest at this stage that amending LT Game International's First  
 6 Amended Complaint would be futile. Leave to amend should be granted "unless it appears  
 7 *beyond doubt* that . . . [the] amended complaint would also be dismissed for failure to state a  
 8 claim if the [movant] could 'prove no set of facts in support of [their] claim[s] which would  
 9 entitle [them] to relief.'" *DCD Programs, Ltd.*, 833 F.2d at 188 (emphasis added).

10                 At the January 24, 2013 hearing on Defendant's Motion to Compel Initial Disclosures,  
 11 the Magistrate Judge intimated that Plaintiff's First Amended Complaint may have been sparse  
 12 on specific allegations. *See Transcript of Hearing on Motion to Compel on January 24, 2013 at*  
 13 *17*, relevant portions attached hereto as **Exhibit 3**. Since the filing of the First Amended  
 14 Complaint, LT Game International and LT Game Canada have discovered additional facts and  
 15 clarified other facts, which have been included in the Second Amended Complaint attached  
 16 hereto. The addition of LT Game Canada as a plaintiff alleviates Defendant's objections to the  
 17 scope of discovery requests, and the inclusion of the additional factual allegations resolves  
 18 Defendant's assertion that the First Amended Complaint is sparse of specific facts.

19                 By way of example, the Second Amended Complaint, among other allegations, sets  
 20 forth the threats made by Defendant's representatives, including its senior vice presidents,  
 21 related to LT Game International and LT Game Canada's intellectual property rights from 2009  
 22 through 2011. *See Second Amended Complaint (Exhibit 1) at ¶ 12*. In addition, the Second  
 23 Amended Complaint states that Defendant has already been found guilty of deliberate patent  
 24 rights violations by the criminal courts in Macau. *See id. at ¶ 14*. The amended pleading also  
 25 provides more details about Defendant's unlawful actions at the 2012 Global Gaming Expo  
 26 Asia in Macau in May of 2012 to the American Gaming Association, G2E Asia Reed  
 27 Exhibitions, and potential customers of the LT Game brand. *See id. at ¶¶ 15-23*. The Second  
 28 Amended Complaint also describes the negative impact of Defendant's action on prospective  
 deals with Genting Malaysia Berhad, Las Vegas Sands Corporation, The Venetian Casino

1 Hotel, & Resort, Commerce Casino, and other companies in Australia and elsewhere. *See id.* at  
 2 ¶¶ 24-31

3 LT Game International's amended pleading, therefore, sets forth a valid claims against  
 4 Defendant. Accordingly, LT Game International, along with LT Game Canada, should be  
 5 afforded the opportunity to have their case heard on the merits.

6       **B. Pursuant to Fed. R. Civ. P. 20(a), LT Game Canada Should be Added as a  
 7 Party.**

8 LT Game International should be permitted to add LT Game Canada as a plaintiff in  
 9 order to promote judicial economy, prevent the need for multiple lawsuits, and to address  
 10 Defendant's discovery-related objections.

11 Fed. R. Civ. P. 20(a) states:

12 Persons may join in one action as plaintiffs if:

- 13       (A) they assert any right to relief jointly, severally, or in the alternative  
       with respect to or arising out of the same transaction, occurrence, or series  
       of transactions or occurrences; and
- 15       (B) any question of law or fact common to all plaintiffs will arise in  
       the action.

17 *See* FRCP 20(a).

18 The permissive joinder rule "is to be construed liberally in order to promote trial  
 19 convenience and to expedite the final determination of disputes, thereby preventing multiple  
 20 lawsuits." *League to Save Lake Tahoe v. Tahoe Reg'l Planning Agency*, 558 F.2d 914, 917 (9th  
 21 Cir.1997). The purpose of Rule 20(a) is to address the "broadest possible scope of action  
 22 consistent with fairness to the parties; joinder of claims, parties and remedies is strongly  
 23 encouraged." *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 724 (1966). "The Rule  
 24 requires only a single common question, not multiple common questions. Fed. R. Civ. P. 20  
 25 ('any question of law or fact common to...'). The common question may be one of fact or of  
 26 law and need not be the most important or predominant issue in the litigation." *Johnson v.  
 27 Shaffer*, No. 2:12-cv-1059 KJM AC P, 2013 WL140115 (E.D. Cal. Jan. 10, 2013) (citing  
 28 *Mosley v. Gen. Motors Corp.*, 497 F.2d 1330, 1333 (8th Cir.1974)).

1       Here, the issues of law and fact are the same with respect to LT Game International and  
2 LT Game Canada. Both have been damaged by Defendant's actions as set forth in the Second  
3 Amended Complaint. Defendant's international campaign of unfair competition through the use  
4 of threats and false representations is part of the same series of occurrences at issue in this case.  
5 The factual allegations and questions are clearly common to LT Game International and LT  
6 Game Canada. Therefore, LT Game International should be permitted to file the Second  
7 Amended Complaint adding LT Game Canada as a party.

8 III. CONCLUSION

9           Based upon the foregoing, LT Game International respectfully requests that the Court  
0 grant it leave to file the attached Second Amended Complaint.

RESPECTFULLY SUBMITTED this 31<sup>st</sup> day of January, 2013.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of McDonald Carano Wilson LLP, and that on the 31<sup>st</sup> day of January, 2013, a true and correct copy of the foregoing **LT GAME INTERNATIONAL LTD.'S MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT** was electronically filed with the Clerk of the Court by using CM/ECF service which will provide copies to all counsel of record registered to receive CM/ECF notification.

/s/ Della Sampson  
An employee of McDonald Carano Wilson LLP

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